

**REMARKS/ARGUMENTS**

The Office Action mailed January 24, 2005 has been carefully considered.

Reconsideration in view of the following remarks is respectfully requested. Claims 1-5, 14-27 are currently pending.

Claim 19 have been amended to further particularly point out and distinctly claim subject matter regarded as the invention. Support for these changes may be found in the specification and figures. The text of claims 20-23 is unchanged, but their meaning is changed because they depend from amended Claim 19.

In the specification, the paragraph [0016] has been amended to correct minor editorial matters. No new matter has been added.

**The 35 U.S.C. § 112, Second Paragraph Rejection**

Claims 19-23 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter applicant regards as the invention. This objection is respectfully traversed.

The office action states that it “is unclear if both the first and second sections have a first pleat and a second pleat, or if the first pleat and a second pleat are the same structure on both first section and the second section.”

Claim 19 has been amended to clarify that “said first section has a first pleat and a second pleat extending into a portion of said second section.” It is respectfully requested that this rejection be withdrawn.

The 35 U.S.C. § 102 Rejection

Claims 1-5, 14-24, 26 and 27 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by Jones et al. (US 5,341,928). Claims 1, 14, 19, and 24 are independent claims. This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.<sup>1</sup>

The office action states that “[v]iewing figures 2 and 5, the upper section of the back panel 5 has pleats 8 extending into the second portion 4. A third section below the expanding second section forms a cavity bottom with the front panel 2.” Applicant respectfully disagrees for the reasons, among others, discussed below.

Claim 1 provides for:

“a back panel having at least one pleat, a first section, and a second section wherein said second section is capable of expanding more than said first section; and

a front panel connected to said back panel to form a cavity adjacent to said second section.”

Independent Claims 14, 19, and 24 provide for similar limitations. As stated in the specification, the “pleated pocket device, generally numbered 10, may have a back panel 100 and a front panel 116. ... As illustrated in FIG. 1A, first portion 102 may have two pleats 108a and 108b, but the number of pleats is not meant to be limiting since any number of pleats will work. The pleats 108a, 108b are folds of even width made by doubling the material upon itself and stitching 110a, 110b the folds in place.” (Specification, [0013]). Thus, the pleat is positioned and formed only by the back panel.

“The front panel 116 may also have a first side 122 opposite a second side 124. The first side 122 and second side 124 may be rigidly fixed to the back panel 100 second portion 104 and the bottom end 140 of first portion 102 as illustrated in FIG. 1A. First side 112 may be rigidly fixed to the first and second portion first outer edge 142 and second side 124 may be rigidly fixed to the first and second portion second outer edge 144. When front panel 116 is rigidly fixed to back panel 100, a cavity 132 is formed to hold any item.” (Specification, [0017]). Thus, the front panel is attached to the sides of the back panel and do not form any part of the pleat on the back panel.

Furthermore, Claim 14 provides that “said second section is capable of expanding more than said first section”. Independent Claims 19 and 24 provide for a similar limitation. “Pleats 108a, 108b also provide for less expansion at the top end 134 than at the bottom section 114 to create an envelope or pouch to provide stability while the beverage container 200 is in the pleated pocket device 10.” (Specification, [0022]).

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<sup>1</sup> Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*,  
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Jones teaches a “single sheet of flexible fabric is folded and creased to form a compact pouch or pocket that can be attached to and detached from a golf bag.” (Abstract). The “invention has an elongated body 2 which preferably is formed of a single sheet of flexible material. ... [T]he body of the pocket includes a rectangular front panel 3 and a rectangular pack panel. The front and back panels are joined at their side edges by integral pleat panels folded rearward and inward from the front and back panels. The pleat panels include rear half panels 5 folded inward from the side edges of the front panel 3 and forward half panels 6 folded inward from the side edges of the back panel 4.” (Col. 2, lines 30-44). Thus, the pleats are formed by both the front panel and the back panel rather than just the back panel as claimed in independent Claims 1, 14, 19, and 24. Furthermore, since the front and back panels are both rectangular, Jones does not teach or suggest a second section that “is capable of expanding more than said first section” as claimed in Claims 14, 19, and 24.

Accordingly, since Jones does not teach each and every element as set forth in Claims 1, 14, 19, and 24, it can not be said to anticipate the claimed invention. Accordingly, it is respectfully requested that this rejection be withdrawn.

#### Remaining Dependent Claims

As to dependent claims 2-5, 15-18, 20-23, and 25-27, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

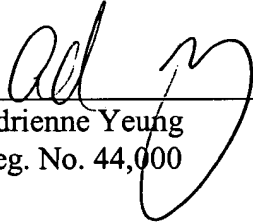
Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account 50-1698.

Respectfully submitted,

THELEN REID & PRIEST, LLP

Dated: \_\_\_\_\_

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